

Issue: Qualification – Work Conditions (Supervisor/Employee Conflict); Ruling Date: February 4, 2013; Ruling No. 2013-3517; Agency: Virginia Department of Health; Outcome: Not Qualified.



*COMMONWEALTH of VIRGINIA*  
*Department of Human Resource Management*  
*Office of Employment Dispute Resolution*

**QUALIFICATION RULING**

In the matter of the Virginia Department of Health  
Ruling Number 2013-3517  
February 4, 2013

The grievant has requested a ruling on whether her October 15, 2012 grievance with the Virginia Department of Health (the agency) qualifies for a hearing. For the following reasons, the grievance does not qualify for hearing.

FACTS

In her October 15, 2012 grievance, the grievant has challenged three specific actions by a supervisor. The grievant challenges 1) the supervisor's statements about the personal life of a former agency employee at a September 10, 2012 staff meeting; 2) the supervisor's statements during a September 12, 2012 meeting with the grievant in which the grievant was told that it was time to "look for another job," among other statements; and 3) the supervisor's hiring of a temporary employee. The grievance proceeded through the management steps without resolution and the grievant now seeks qualification of her grievance from the Office of Employment Dispute Resolution (EDR).

DISCUSSION

Although state employees with access to the grievance procedure may generally grieve anything related to their employment, only certain grievances qualify for a hearing.<sup>1</sup> Additionally, by statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.<sup>2</sup> Thus, claims relating to issues such as to the methods, means, and personnel by which work activities are to be carried out generally do not qualify for a hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied or unfairly applied.<sup>3</sup>

*Personally and Directly Relate to the Employee's Employment*

A grievance must pertain "directly and personally to the employee's own employment."<sup>4</sup> The grievant's challenges to the statements made by the supervisor in the September 10, 2012

<sup>1</sup> See *Grievance Procedure Manual* § 4.1 (a) and (b).

<sup>2</sup> See Va. Code § 2.2-3004(B).

<sup>3</sup> Va. Code § 2.2-3004(A); *Grievance Procedure Manual* § 4.1(c).

<sup>4</sup> *Grievance Procedure Manual* § 2.4.

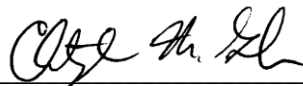
staff meeting and the hiring of a temporary employee do not pertain “directly and personally” to the grievant’s employment. These matters relate to issues involving other employees and/or a former employee. EDR has reviewed nothing that demonstrates any activity directed at the grievant in these occurrences. Consequently, those matters are not the proper subject for a grievance by this grievant and do not qualify for a hearing.<sup>5</sup>

*Adverse Employment Action*

The grievance procedure generally limits grievances that qualify for a hearing to those that involve “adverse employment actions.”<sup>6</sup> Thus, typically, the threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a “tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”<sup>7</sup> Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.<sup>8</sup>

The grievant essentially challenges allegedly intimidating statements made by a supervisor in a meeting on September 12, 2012. However, nothing in the grievant’s allegations regarding the supervisor’s conduct in this one meeting is significant enough to rise to the level of an adverse employment action. The grievant has not demonstrated that the meeting had an adverse effect on the terms, conditions, or benefits of the grievant’s employment. Further, we cannot find that the grieved issues rose to a “sufficiently severe or pervasive”<sup>9</sup> level to support a claim of harassment (discriminatory or retaliatory).<sup>10</sup> As such, the grievance does not qualify for a hearing.

EDR’s qualification rulings are final and nonappealable.<sup>11</sup>



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Director  
Office of Employment Dispute Resolution

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<sup>5</sup> See Va. Code § 2.2-3004(A) (“A grievance qualifying for a hearing shall involve a complaint or dispute by an employee ... in which the employee is *personally* involved.”) (emphasis added).

<sup>6</sup> See *Grievance Procedure Manual* § 4.1(b).

<sup>7</sup> *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761 (1998).

<sup>8</sup> *Holland v. Washington Homes, Inc.*, 487 F.3d 208, 219 (4<sup>th</sup> Cir. 2007).

<sup>9</sup> See generally *White v. BFI Waste Services, LLC*, 375 F.3d 288, 296-97 (4<sup>th</sup> Cir. 2004).

<sup>10</sup> See *Gilliam v. S.C. Dep’t of Juvenile Justice*, 474 F.3d 134, 142 (4<sup>th</sup> Cir. 2007). As courts have noted, prohibitions against harassment, such as those in Title VII, do not provide a “general civility code,” *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998), or remedy all offensive or insensitive conduct in the workplace. See, e.g., *Beall v. Abbott Labs.*, 130 F.3d 614, 620-21 (4<sup>th</sup> Cir. 1997); *Hopkins v. Baltimore Gas & Elec. Co.*, 77 F.3d 745, 754 (4<sup>th</sup> Cir. 1996).

<sup>11</sup> Va. Code § 2.2-1202.1(5).